IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 411 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
SANJAYBHAI RAMANBHAI PATEL & ANR

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Appearance :
MR KP RAVAL APP for Appellant
MR DIVYESH JOSH for MR JB PARDIWALA for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/10/2007

ORAL JUDGMENT :(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 Leave to Appeal granted. Appeal is Admitted. Learned Advocate Mr. Divyesh Joshi for learned Advocate Mr. J.B. Pardiwala, waives for respondents.

2 Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure, against the judgment and order dated 30th of September, 2004, delivered by learned Additional Sessions Judge, Fast Track Court No.2, Rajpipala, in Sessions Case No. 140 of 1999, whereby both the present respondents, being accused of the Sessions Case, came to be acquitted by the Trial Court, for the offences punishable under Sections 498-A, 306, 302 to read with Section 114 of the Indian Penal Code.

3 Learned APP Mr. K.P. Raval for the Appellant - State and learned Advocate Mr. Divyesh Joshi for learned Advocate Mr. J.B. Pardiwala, on behalf of the respondents, requested this Court to take up this matter for final hearing as the Record and Proceedings of the Trial Court has been called for and available. It is also requested by them that they would assist this Court with extra copies of the evidence recorded during trial as well as extra copies of the documents produced

in the Trial Court. In the facts and circumstance of the matter, request is granted and the Appeal is heard finally.

4 Prosecution case in brief be stated that Limjibhai Jogidas Patil is the complainant, and according to the prosecution case, his daughter Ranjanaben (Shreya) was married to respondent No.1 Sanjaybhai Ramanbhai Patel on 17th of April, 1998. Respondent No.2 is mother of respondent No.1. Originally, respondents belonged to village Padadra, Taluka Shahadana, but at the time of incident, they resided in Kevadia Colony. Sanjay, his parents and sister Karuna of respondent No.1 along with Ranjanaben, were staying together. Ranjanaben was brought to her parental home as per the custom after some period of the marriage. At that juncture, Avinash, brother of Ranjanaben and Kamlaben, mother of Ranjanaben, had been to in-laws of Ranjanaben. At that juncture, respondents, in taunting tone, informed the parents of Ranjnaben that Ranjana did not know how to manage household nor she knew cooking. When Ranjanaben was informed about this, she stated that, her in-laws were on false pretext, quarreling with her and she knew how to manage household and stated that, in fact, her in-laws frequently demanded cup boards, dry fruits, saris, etc and in non-availability, they execute mental cruelty upon her. To satisfy her in-laws, parents of Ranjanaben, gifted a sari to the sister

of respondent No.1. Even then, Karunaben, sister of respondent No.1 used to frequently taunting Ranjanaben and her parents that Ranjanaben did not know anything even she did not know English. The sari which was gifted was returned, as according to in-laws of Ranjanaben, the same was of inferior quality. Parents of Ranjanaben took back the sari and gave Rs. 300/- in cash. There was a wedding in the family at Baroda, where Ranjanaben visited and complained to her father that her in-laws were taunting her and were executing cruelty on the pretext that the marriage was not properly celebrated and necessary items like washing machine, cooler, fridge, dining table, etc. were not gifted to her. Respondent No.1 had demanded a motorcycle. Parents of respondent No.1 also had supported all these demands. Thereafter, on 5th of December, 1998, respondent No.1 informed on phone at Dhuliya that Ranjana had got burn injuries. Before 5th of December, 1998, Ranjana had a talk with her mother, wherein she had complained about cruelty executed by her in-laws and husband upon her. On receiving phone call, from Kevadia Colony, brother of Ranjanaben and her family members went to Baroda, where Ranjanaben was admitted for treatment in Saumya Hospital of Dr. Sachin Shah. Ranjana was burnt in lower limbs. Parents and family members of Ranjana were informed that while Ranjana was heating the water on gas, she got burn injuries. At first instance, on account of treatment, she was recovering and she started

moving in room. Thereafter brother of Ranjanaben inquired from her about the incident and she stated that if the real picture of the incident was put in, there might be quarrels and, therefore, she advised not to quarrel till she was discharged from the hospital, otherwise, on account of quarrel, her mental condition would be deteriorated. On 7th of January, 1999, Ranjanaben told to her parents that on 4th of December, 1998, the whole night she was harassed by the respondents physically and mentally and on 5th of December, 1998 at about 4.30 a.m. respondent No.2 and respondent No.1 dragged her at the roof of the building and respondent No.2 poured kerosene upon her and was ignited by her husband - respondent No.1. Having told so to her mother, Ranjanaben started crying and the Doctor, who was treating her, advised not to give mental stress to Ranjanaben. On 8th of January, 1999, her health was deteriorated and serious complication had arisen and ultimately on 11th of January, 1999, at about 1.00 hours, she died. Her in-laws were demanding dowry and they did not intend to give divorce to her and wanted to harass Ranjanaben and, therefore, they killed Ranjanaben.

5 The complaint was given by Limjibhai on 15th of January, 1999 before Kevadia Colony Police Station where the crime was registered for the above said offences against the respondents, vide

Crime Register No. I-4/1999 and a charge sheet ultimately was submitted in the Court of Judicial Magistrate, First Class, at Rajpipla. The said charge sheet was registered as Criminal Case and learned Judicial Magistrate, First Class, Rajpipla, committed the above said case to the Sessions Court, Bharuch, and the said Sessions Case was registered as Sessions Case No.140 of 1999 and was made over to the Additional Sessions Judge, Fast Track Court No.2, Rajpipla.

6 Learned Joint District Judge, 4th Fast Track Court, Rajpipla, framed charges against the accused respondents vide Exhibit- 7 on 24th of December, 2002 and vide Application at Exhibit – 107, the said charge was amended on 30th of September, 2004 and was read over to the accused and each of the accused pleaded not guilty and, hence, they were put to trial.

7 Prosecution examined as many as 13 witnesses and produced on record voluminous documentary evidence. Evidence of the prosecution being over, the circumstances appearing against each of the accused were put to them, under Section 313 of the Code of Criminal procedure by the Trial Judge, and each of the accused stated that the evidence of prosecution was false and their defence was of total denial, but they requested to examine the defence witnesses and, therefore,

vide Exhibit – 85, Police Sub-Inspector, Vakhatsinh Dabhsinh Parmar, was examined as DW-1, who had recorded the statement of the deceased Ranjanaben, in first point of time and Shaikh Imammiya Valumiya, examined as DW-2 vide exhibit- 92, who had recorded the Dying Declaration of the deceased on the next day of the incident. Thereafter, prosecution and defence were heard in detail and learned Trial Judge came to the above conclusion of acquitting the accused and, hence, this Appeal.

8 Learned APP Mr. K.P. Raval for the appellant - State and learned Advocate Mr. Divyesh Joshi for learned Advocate Mr. J.B. Pardiwala on behalf of the respondents were heard in great detail with respect of the Appeal.

9 Both the learned Advocates appearing for the parties have taken this court to each corner of the Record and Proceedings of the Trial Court. We have meticulously scanned the evidence recorded during the trial and re-appreciated the same thoroughly. We have considered vital features of the matter and reasonable probabilities arising out of the circumstances of the case. We have scrutinized the appreciation of evidence undertaken by the Trial Court for the conclusion of acquittal and we have also carefully examined the reasons

assigned by the Trial Court for the conclusion of the acquittal. We have scrutinized the matter from each angle and keeping in mind the weightage of evidence, threadbare judicial scrutiny has been undertaken.

10 Going through the prosecution case, it clearly appears that PW-1 Limjibhai Jogidas Patil, examined at Exhibit – 11, father of the deceased; PW-2 Kamlaben Limjibhai Patil, examined at Exhibit-16, mother of the deceased; PW-3 Avinash Limjibhai Patil, examined at Exhibit-18, brother of the deceased and PW-4 Shankarbhai Jogidas Patel, examined at Exhibit-21, uncle of the deceased, all of them supported the theory, which is noted in the FIR given by Limjibhai Jogidas Patil and placed on record at Exhibit – 13. The story narrated in the said FIR materially has been supported by these witnesses though they have been cross-examined by the defence in great detail. PW-5 Dr. Sachin Jashvantbhai Shah, examined at Exhibit-23, is the Doctor who treated the deceased at Baroda and he stated in his deposition that the deceased was suffering from 35 to 40% third degree burns and when she was brought to his hospital on 5th of December, 1998, she was fully conscious and in history she herself stated that on that morning while heating water, the flames of gas caught her saris an, therefore, her lower limbs were caught in the flames. The Doctor deposed the

treatment given by him in detail. He also stated that no restrictions, whatever, were imposed by him upon the relatives of the deceased, in any manner and stated that mother of the deceased was constantly with her during treatment. On 8th of January, 1999, her health was deteriorated and on 11th of January, 1999, she died on account of burn injuries. He produced on record certificate at Exhibit-24. Inquest panchnama is placed at Exhibit-25, Exhibit- 26 is panchnama of scene of offence; Exhibit-27 is also a panchnama of scene of offence. PW-6 examined at Exhibit-28, Rajubhai Ramanbhai Simpi is panch of panchnama Exhibit – 35 and according to this panchnama, the scene of offence was shown at the roof of the block in which the deceased was residing. However, this witness has not supported the prosecution case and has turned hostile. Second panch of this panchnama is PW-7 Yashwantbhai Dhansukhbhai Bhatia, examined at Exhibit-29, but he has also not supported the prosecution case. PW-8 Mitaben Rakeshbhai Bhatt, examined at Exhibit-30, is the neighbour of the deceased and she stated that on 5th of December, 1998, respondent No.1 informed her that Shreya had got burn injuries and, therefore, they went to their residence and Shreya was in a room. Shreya never informed her that the incident had occurred on the roof of the block nor informed that she was harassed by the respondents. PW-9 Rakeshbhai Vinodchandra Bhatt, examined at Exhibit-31, is also a neighbour of deceased and

husband of PW-8 Mitaben. They did not support the prosecution theory that the deceased was harassed by her in-laws and that the incident had occurred at the roof of the block, in which they were residing. He had called Dr. Bhupendrabhai for first aid treatment. The witness has been declared hostile. PW-10 Pareshkumar Hitendrarai Vyas, examined at Exhibit-32, is also a neighbour of the deceased and he has also not supported the prosecution theory of harassment and that the incident had taken place at the roof of the residence of the respondents. PW-11 Vamanrav Dularav Vanzara, examined at Exhibit-34, was working as CPI, Rajpipla and on 23rd of January, 1999, he was entrusted the investigation of this crime. He recorded the statements of the witnesses, draw panchnamas and submitted charge sheet against the accused. PW-12 Kishler Promodrai Desai, who was examined at Exhibit-38, is the Doctor, who performed postmortem on dead body in SSG Hospital at Baroda. He had received a Yadi from police and a copy of the inquest panchnama. He produced on record postmortem note at Exhibit-40 and accordingly the cause of death, in the opinion of this witness, was shock due to burns. PW-13 Mustakahemadkhan Nasibkhan Pathan, examined at Exhibit-41, was the Police Sub-Inspector, Kevadia Colony and he had recorded the complaint of the complainant and had forwarded the same to the police station for registration. He deposed that on 5th of December, 1998, vide Exhibit – 36, from Raopura Police

Station, Baroda, information about incident was conveyed to Kevadia Police Station, which was noted in the register of Kevadia Police Station. This entry was inquired by this witness and recorded certain statements and draw panchnama. During his inquiry, a complaint came to be filed by father of the deceased and thereafter, the crime came to be registered and investigation was thereafter entrusted to PW-11 Vamanrav Dularav Vanzara. It is noted in Exhibit-36 Vardhy that the deceased while heating water on gas at 6.30 a.m. on 5th of December, 1998 at her residence, caught flames from the gas and got burn injures.

11 After the prosecution evidence was over, the defence examined two defence witnesses. One of them is DW-1 Vakhatsinh Dabsinh Parmar. According to him, on 6th of December, 1998, he was serving as PSI in Raopura Police Station and received a telephone vardhy from the hospital of Dr. Sachin Shah. PSO recorded the information in the register and the contents of the vardhi was that the deceased got burn injuries while she was heating water. This witness visited the hospital of Dr. Sachin Shah and inquired from deceased Shreya (Ranjana) that how she had got burn injuries. She stated before him how the incident had occurred and the witness had recorded her statement, which is at Exhibit-86, wherein the deceased stated that she got burn injures on account of the incident as has been recorded in

Raopura Police Station entries. He has been asked by the prosecution about the mental condition of the deceased and it appears that the witness found that the deceased was fully conscious. DW-2 Shaikh Imammiya Valumiya, examined by the defence at Exhibit-92 is the Executive Magistrate. According to him, on 6th of December, 1998, at about 2.30 a.m. he received a Yadi from Raopura Police Station about recording of dying declaration of deceased Shreya Patil. That Yadi he produced on record at Exhibit – 93. In pursuance of that Yadi, he visited the hospital and met Dr. Sachin Shah. In Exhibit – 93 Dr. Sachin Shah gave the certificate that patient was fully conscious and was able to speak and give statement. Dr. Sachin Shah had signed the above certificate. Thereafter he visited Room No. 24 where Shreyaben (Ranjanaben) was taking treatment. He introduced himself and requested other relatives to leave the patient alone. At about 3.25 a.m. he started recording dying declaration of the deceased. The deceased stated her name, her age, etc. On a question that how she got burn injuries, the deceased stated before this witness that at about 5.30 a.m. while she was heating the water in her kitchen on gas and the gas was in flames, which caught her sari, which was silky and, therefore, immediately, she caught in flames, but during that time, on the back of her abdomen and lower limbs, she was seriously burnt. According to her, she was alone in the kitchen and she shouted for her husband, he

responded immediately and then she was lifted by her husband and was made to lie on a cot. She was then taken to the hospital at Baroda at 11.00 a.m. She further stated that the incident had taken place accidentally and nobody was at fault. She was staying with her husband peacefully and there was no dispute whatsoever. Dying declaration has been produced by this witness at Exhibit-95. He has been cross-examined by the prosecution in detail.

12 These are all the circumstances of the prosecution case.

13 While re-appreciating the evidence, it clearly comes out that there are two views emerging from the prosecution evidence itself. True that, the second view emerges through the defence witnesses, examined by the defence, but these are the facts transpired during the investigation. Therefore through a set of evidence in the form of deposition of four witnesses i.e. PW-1, PW-2, PW-3 and PW-4, relatives of the deceased. The prosecution case appears to be that Shreyaben was harassed by the respondents and demands of dowry were vigorously put by them to the parents of the deceased. At the night of 4th of December, 1998, Shreyaben was taken by both the respondents at the roof where the respondent No.2 poured kerosene and respondent No.1 ignited Shreyaben and she got burn injuries. All the four witnesses,

though had stated about the incident which took place between the period from the marriage of deceased Shreyaben till 5th of December, 1998. The question, therefore, arises whether the evidence as has been led by the prosecution through these four witnesses is credit-worthy and believable or the initial version which the prosecution recorded before filing of the complaint is the version which could be accepted by the Court.

14 While appreciating the evidence of the prosecution as a whole and while assessing the reasonable probabilities arising out of the circumstances of the case, it must also be noted that none of the neighbours of the deceased stated anything which linked the accused with the crime. The fact must not be lost sight of that, the complaint came to be filed by the father only on 15th of January, 1999 i.e. after about more than one moth of the incident. Right from 5th of December, 1998, the deceased was taking treatment in the hospital of Dr. Sachin Shah and from his deposition it becomes clear that her health was initially in good condition, but the health took turn suddenly after one month and she died. The deceased was allowed to walk in the room and talk freely with all her relatives. According to Dr. Sachin Shah even mother of the deceased was constantly staying with the deceased. When these circumstances are weighed with the evidence produced in

defence that DW-1 Vakhatsinh Dabhsinh Parmar right after the incident, in few hours noted the statement of the deceased where deceased firmly and categorically stated about the accident occurred when she was heating the water, the story narrated by PW-1, 2, 3 and 4 becomes doubtful. DW-1 Vakhatsinh Dabhsinh Parmar serving as PSI, Raopura Police Station is an independent witness, having no interest of any kind in any of the party. The statement recorded by him of the deceased must be regarded as weighty evidence as this is the first version of the incident recorded by an independent witness and secondly there was no reason that during this period of one month, no second statement at the instance of the deceased or her relative, could be recorded even before the Police Officer refuting the earlier statement. Not only that, but the circumstance in the favour of the accused are more strengthened by the deposition and evidence of DW-2 Shaik Imammiya Valumiya, Executive Magistrate and an independent witness, who recorded DD, which is at Exhibit–95, after ascertaining that the deceased was fully conscious and spontaneously stated before this witness in dying declaration that the incident occurred on account of the accident. There is no reason that DW-1 and DW-2 both should be labelled as unreliable witnesses and acting in favour of the accused. Not a single circumstance could be brought on record to impeach these two witnesses. This is the initial circumstances and very first reaction

of the deceased to the government officials and cannot be discarded on account of what is stated by the relatives of the deceased about the incident. It must also be noted that the pretext advanced by the complainant that the deceased was not allowed to talk freely with her relatives because the treating Doctor advised that she might get mental stress, is required to be weighed with the evidence of Dr. Sachin Shah, who in categoric terms stated that he had not imposed any such restrictions apprehending any mental stress upon the deceased. When oral evidence of four witnesses and other circumstances as deposed by DW-1 and DW-2 and Dr. Sachin Shah are appreciated and balanced through judicial scrutiny, it clearly emerges that the first version, as has been established by the defence evidence, is the weighty evidence and it must override the overall evidence of the relatives of the deceased, which appears to be tailored out and an after thought on account of the sudden demise of the deceased Ranjanaben. There is no earthly reason to disbelieve the statement as recorded by DW-1 and dying declaration as recorded by DW-2, and when these circumstances are established fully, the oral evidence of the witnesses i.e. PW-1, PW-2, PW-3 and PW-4, must be discarded and must be labeled as discredit-worthy.

15 The Trial Court weighed the evidence properly and came to the right conclusion that the independent evidence of dying declaration

and the statement as recorded by DW-1 overrides what is stated by PW-1, PW-2, PW-3 and PW-4. The Trial Court, therefore, acquitted the accused and on re-appreciation of the evidence, we also come to the same conclusion. Though this being an Appeal against the acquittal, we have throughly scanned the reasons assigned by the Trial Court and we have found that the view taken by the Trial Court is possible and probable view, which could not be labelled as perverse or manifestly erroneous. This being an Appeal against the judgment and order of acquittal, we are not inclined to interfere because we do not find that the reasons assigned by the Trial Court for the conclusion of the acquittal and appreciation undertaken are so perverse that would not stand to reason by a common prudence. In the result, the judgment and order impugned in this Appeal is not exceptionable and, hence, the following Order is passed.

"Appeal stands dismissed."

(J. R. VORA, J.)

(M. R. SHAH, J.)

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